IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.1 OF 2005.

1. Miss Anita Keshav Parab.

2. Rupesh Keshav Parabl,
both are of major age,
r/o Palmar Pomburpa,
Bardezo, Goa. .... Petitioners.

Versus

1. The State,
Through Public Prosecutor,
Panaji, Goa.

2. Ajit @ Kiru Sadashiva Parab.

2A. Keshav @ Sadashiv Parab.

3. Sudesh Keshav Parab,
all are of Major age,
r/o Palmar Pomburpa,
Bardez, Goa.

4. Narayan Gaonkar,
of Major age, businessman,
r/o Shapora, Bardez, Goa. .... Respondents.

Shri S. M. Walwaikar, Advocate for the Petitioners.

Ms. W. Coutinho, Additional Public Prosecutor for the Respondent No.1.

CORAM: N. A. BRITTO, J.

DATE: 4th February, 2005.

ORL ORDER:

The petitioners herein who are accused Nos.1 and 5 in Sessions Case No. 11/2001 before the learned Addl. Sessions Judge at Mapusa, invoke the writ jurisdiction of this Court to complain that their right of fair trial has been denied to them by virtue of the Order dated 24.6.2004 of the learned Addl. Sessions Judge, Mapusa by which their request to send the register (Exh.132) to a handwriting expert has been refused.

2. Heard Shri S.M. Walwaikar on behalf of the petitioners and Additional P.P. Ms. Coutinho on behalf of the respondent No.1.

3. The petitioners along with the other accused are being prosecuted in the said Sessions Case under Sections 143, 147, 148, 427, 327, 326 and 307 read with S.149 I.P.C.

4. The prosecution, claiming that Arun Bhonsle who was at the relevant time working as a security guard for Cobra Security Services, examined him as an eye witness to the incident. To support their case that P.W.18 Arun Bhonsle was in fact deputed for duty as security guard at the place where the incident took place, the prosecution examined P.W.20, the proprietor of the said Cobra Security Services and who in turn, to support her say, produced a register namely Exh.132.

5. A dispute has been raised on behalf of the accused that the entry ' “18.7.00 - 226A “ on the said register was inserted subsequently. As far as this entry is concerned, P.W.20 Sherlina Fernandes has stated she herself does not know which particular Clerk made the said entry. The said accused also examined Clayton Fernandes, a Director of the said Security Services as D.W.1 who has also stated that he does not know who made the said entry though all other entries on the said page were made by one Ms. Remy Dias who no longer works with the said Security Services. The petitioners herein initially filed a revision application against the said order of the learned Addl. Sessions Judge, Mapusa dated 24.6.04 and then withdrew the same and now have filed the present petition.

6. The learned Addl. Sessions Judge by the said Order dated 24.6.04 has observed that the handwriting expert is not required to certify the different writings and that in the case at hand the said P.W.20 Sherlina has admitted that she does not know which of her staff had made the said entry nor was it shown in any manner by the defence that the said entry at 226A was made by a particular person, and if that was the case, sending the Register to the handwriting expert would be an exercise in futility. In fact, if one does not know as to who made a particular writing, no useful purpose would be served by trying to find out as to when it was made, even

assuming an expert could opine on the same with reference to ink used in writing the same as compared to other entries. In my opinion, the request of the said accused was rightly rejected by the learned Addl. Sessions Judge at the stage it was made.

7. In my view, the question before the learned Trial Court will be one of essentially appreciating the evidence of the said P.W.18 whether he was at all present at the scene and the evidence of P.W.20 whether P.W.18 was deputed for duty at the said place. The said entry is not directly in dispute before the Trial Court. In view of the above, the order of the learned Trial Court cannot be said to be an order which has occasioned great injustice or gross failure of justice or is based on clear ignorance or utter disregard of the provisions of law, which is sine qua non, to exercise writ jurisdiction against such orders.

8. In view of the above, I find there is no merit in this Petition and the same is hereby dismissed.

N. A. BRITTO, J.

sl.